

Volume 28

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

|                       |   |                           |
|-----------------------|---|---------------------------|
| ORACLE AMERICA, INC., | ) |                           |
|                       | ) |                           |
| Plaintiff,            | ) |                           |
|                       | ) |                           |
| VS.                   | ) | No. C 10-3561 WHA         |
|                       | ) |                           |
| GOOGLE, INC.,         | ) |                           |
|                       | ) |                           |
| Defendant.            | ) | San Francisco, California |
|                       | ) | May 22, 2012              |

**TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued on next page)

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P R O C E E D I N G S

MAY 22, 2012

9:18 A.M.

(The following proceedings were held in open court,  
outside the presence of the jury.)

**THE COURT:** Please be seated.

We have another note, from Ms. Chiu:

"For the purpose of patent '104, do the  
claims cover a symbolic resolution anywhere  
in the data fields?"

All right. Let's hear your suggested responses.

**MR. JACOBS:** Our proposed response, our urged  
response, Your Honor, is, yes.

The jury is asking a question about claim scope. The  
Court's constructions, the claim language imposed no locational  
limitation on where symbolic reference resolution takes place.

If you think back to the sequence of questions, the  
first question about "contained" was a question about a  
locational limitation. That was answered in the affirmative.

Then there was a question about looking -- about  
whether you can look downstream to determine the nature of the  
reference, to determine whether it is symbolic or numeric. And  
so they were given an answer, yes, you can look downstream. Of  
course, you can look downstream.

And now they're asking about symbolic reference

1 resolution itself. And so we think they should be told that  
2 the answer to that question is yes.

3 A more lengthier version of that answer would be  
4 something like: In looking at the claim language and my  
5 constructions, if I -- if the claim language and my  
6 constructions do not impose additional limitations on time,  
7 place, manner, then you should not read restrictions on --  
8 limitations on time, place, manner into the claims. And with  
9 that general guidance, the answer to your question, yes, there  
10 is no locational -- there's no restriction as to location in  
11 the claims or in my constructions as to where symbolic  
12 reference -- symbolic resolution takes place.

13 **MR. KAMBER:** Good morning, Your Honor.

14 **THE COURT:** Good morning.

15 **MR. KAMBER:** With respect to this question we think  
16 the answer should quite clearly be a no, based on -- and I  
17 would agree with Mr. Jacobs that the answer lies in the claims  
18 and the claim language itself.

19 In the claim language the term "resolution" or  
20 "resolve," it's not in Claim 11 explicitly. It is, however, in  
21 asserted Claims 27 and 29, where the discussion relates to  
22 "resolve any symbolic data references in the set of original  
23 instructions."

24 And so -- let me grab the board.

25 The resolution of the symbolic references, symbolic

1 references that have to be resolved in Claims 27 and 29, have  
2 to be in the instructions, quite clearly. It's explicit.

3 There's no disagreement among the experts that the literal  
4 claim language requires that the instructions being resolved,  
5 the symbols, the symbolic references, be in the instructions.

6 It's similar for Claims 39 through 41, all of which  
7 talk about the numeric reference having been resolved from the  
8 symbolic field reference. And that symbolic field reference is  
9 in the second element of Claim 39, for example, analyzing each  
10 instruction to determine whether it contains a symbolic field  
11 reference.

12 So, again, we have the symbolic field reference in  
13 the instructions. The resolution to a numeric has to be the  
14 resolution of the symbol in the instructions.

15 Now, the problem with answering this question with a  
16 yes answer is that it essentially allows the jury to reach a  
17 conclusion of infringement on a theory that was never put  
18 forward by Oracle. Specifically, the doctrine of equivalents.  
19 It was never pleaded. It was never argued by their expert.  
20 And saying that symbolic resolution can happen anywhere allows  
21 them to get away with something.

22 The instructions, the symbols that are being resolved  
23 have to be -- excuse me, the symbols have to be in the  
24 instructions.

25 **THE COURT:** Well, let's look at Claim 27. Just focus

1 on that.

2 Does Claim 27 call out where the resolution occurs?

3 **MR. KAMBER:** It calls out what has to be resolved.

4 **THE COURT:** That's not my question.

5 Does it call out where the symbolic reference gets  
6 resolved?

7 **MR. KAMBER:** I think it does, Your Honor.

8 **THE COURT:** Said resulting from an indication of a  
9 routine to resolve any symbolic data references.

10 **MR. KAMBER:** Correct.

11 **THE COURT:** All right. So --

12 **MR. KAMBER:** The point isn't sort -- the routine  
13 itself can be anywhere in the computer. What's being resolved  
14 has to be the symbol in the instructions.

15 And I think to the extent that Your Honor isn't  
16 willing to give a clean sort of yes or no answer to this  
17 question because it gets too close to the facts, one thing to  
18 remind the jury is to read the literal claim language, because  
19 the literal claim language has to be met in order for there to  
20 be infringement.

21 **THE COURT:** Let's look at number 39 for a minute.  
22 Does 39 call out where the resolution is supposed to occur?

23 **MR. KAMBER:** Again, Your Honor, here it refers to, in  
24 the second element, analyzing each instruction to determine  
25 whether it contains a symbolic field reference. So we're

1 looking at the instructions, looking for symbols in those  
2 instructions.

3 Further down, it talks about the resolution. It's  
4 the last line. But, the numeric reference having been resolved  
5 from the symbolic field reference. That's referring back to  
6 the symbolic field reference in the instruction.

7 So the resolution may be a routine that's anywhere in  
8 the computer, but that routine has to be applied to the symbol  
9 in the instructions.

10 And so it's not enough for the jury to have found a  
11 symbol being resolved, perhaps, here on the board. It's  
12 actually occurring even further to the right here (indicating).  
13 The symbol that's being resolved from the symbolic -- the  
14 reference that's being resolved from a symbolic to a numeric  
15 reference has to be one that's in the instructions as required  
16 by the literal claim language.

17 **THE COURT:** All right. Anything more?

18 **MR. KAMBER:** No, Your Honor.

19 **MR. JACOBS:** Your Honor, we're mixing issues.

20 I think Your Honor has it. There is no restriction  
21 on where symbolic reference resolution takes place. There is  
22 no requirement, that Google is now seeking to impose, that  
23 there actually be a replacement of the actual operand in the  
24 instructions. That's implicitly what Google is now arguing.  
25 The only kind of symbolic resolution that qualifies under the

1 patent is if this is literally changed (indicating).

2 Having told the jury that the quality of this can be  
3 informed about what happens downstream, it makes no sense to  
4 say that this, 01 in the instructions 52 01, has to be changed  
5 in order for symbolic reference resolution to take place.

6 **THE COURT:** I know the answer.

7 **MR. KAMBER:** Your Honor, may I make one quick point?

8 **THE COURT:** Thirty seconds.

9 **MR. KAMBER:** With respect to whether it has to be  
10 changed or not, Claims 27 and 29 actually do require that the  
11 claims be rewritten. That's why that theory -- those claims  
12 are only asserted against dexopt, which does rewrite. Whereas,  
13 the other ones only requires resolution and saving the results  
14 of the resolution somewhere else. That's Claims 11 and 39  
15 through 41.

16 **THE COURT:** Still doesn't say where resolution  
17 occurs.

18 Let's bring in the jury. I know the answer to this  
19 one.

20 (Jury enters at 9:27 a.m.)

21 **THE COURT:** Okay. Welcome back. Please be seated.

22 At 8:57 a.m. Ms. Chiu writes:

23 "For the purpose of patent '104, do the  
24 claims cover a symbolic resolution anywhere  
25 in the data fields?"



1 I'll repeat the question.

2 "For the purpose of patent '104, do the  
3 claims cover a symbolic resolution anywhere  
4 in the data fields?"

5 All right. I'm going to give you a pretty clear-cut  
6 answer to this, but first I need to remind you of one thing.

7 In order to find infringement of any claim, all  
8 limitations in that claim must be met. Three and a half out of  
9 four is not good enough. It has to be four out of four.

10 But, if it is four out of four, you don't add  
11 anything more to it. You don't add additional limitations that  
12 you think ought to be there. Four out of four is good enough.  
13 Three and a half is not good enough. Four and a half is more  
14 than you need.

15 Now, so whenever you go through these limitations you  
16 go through each paragraph and make sure each one is there. If  
17 it's there, great; infringement. If it's not there, great; no  
18 infringement.

19 All right. So let's go back to your question. For  
20 purposes of patent '104, do the claims cover a symbolic  
21 resolution anywhere in the data fields?

22 Well, if you read the limitations, do you find any  
23 such requirement as to where the resolution occurs? No. The  
24 claims do not specify anyplace that the resolution has to  
25 occur.

1           So that's the answer to that question.

2           Now, does that mean that just resolution anywhere in  
3 the universe would be enough to meet these claims? No. You  
4 still have to meet every single one of these limitations.

5           If the limitations are there, that's what you're  
6 looking for. But a specification as to where in the computer  
7 the resolution takes place is not part of these claims.  
8 "Resolution" is. "Where" is not.

9           End of story. Please return to the jury room and  
10 continue your deliberations.

11           **THE CLERK:** All rise.

12           (Jury out at 9:31 a.m.)

13           **THE COURT:** Please be seated.

14           Anything anyone wants to put on the record?

15           **MR. JACOBS:** Nothing further, Your Honor.

16           **MR. KAMBER:** No, Your Honor.

17           **THE COURT:** All right. Any business we can do while  
18 I have you all here?

19           **MR. JACOBS:** I think we're okay.

20           **MR. KAMBER:** As are we.

21           **THE COURT:** Where is Mr. Van Nest today?

22           **MR. KAMBER:** He's in Chicago, Your Honor. He'll be  
23 back tomorrow.

24           **THE COURT:** That's fine. He is entitled. You have a  
25 very capable team over there. Tell him we got along fine

1 without him.

2           **MR. KAMBER:** We'll let him know. Thank you, Your  
3 Honor.

4           **THE COURT:** All right. See you soon.

5 (Proceedings in recess from 9:32 a.m. to 10:55 a.m.)

6           **THE COURT:** Okay. Be seated.

7 We have a note from the foreperson:

8 "In the symbolic reference definition, if we  
9 find a reference that identifies data by a  
10 numeric memory location of the data, does the  
11 existence of an initial numeric reference  
12 preclude the existence of a symbolic  
13 reference?"

14 Now, the symbolic reference definition is, in the  
15 instructions, paragraph 11:

16 "The term 'symbolic reference' means 'a  
17 reference that identifies data by a name  
18 other than the numeric memory location of the  
19 data, and that is resolved dynamically rather  
20 than statically.'"

21 All right. So they're saying:

22 "In the symbolic reference definition, if we  
23 find a reference that identifies data by a  
24 numeric memory location of the data, does the  
25 existence of an initial numeric reference

1 preclude the existence of a symbolic  
2 reference?"

3 All right. Let's hear what you have to say.

4 **MR. JACOBS:** The answer to the question is, no, the  
5 existence of an initial numeric reference does not preclude the  
6 existence of a symbolic reference.

7 In the Court's construction of symbolic reference  
8 there is no requirement of only or exclusively.

9 The question in analyzing a putative symbolic  
10 reference for its symbolicness is whether it serves to refer --  
11 to identify data by a name other than the numeric memory  
12 location of the data, regardless of whether it may be a pointer  
13 into a location in memory as well.

14 And so in the -- what the jury is struggling with, I  
15 believe, is that Google argues that 01 is a pointer to a field  
16 and, therefore, it's a numeric memory location, even though the  
17 undisputed evidence, both sides' experts, both sides' -- well,  
18 Google's fact witness, is that the purpose of the IGET  
19 instruction with 01 is to retrieve data here (indicating) from  
20 the data object. And, of course, the 01 doesn't identify that  
21 data by a numeric memory location.

22 Another way of saying it is that the Court's  
23 construction of symbolic reference has no requirement of  
24 directness. By definition, any indirect reference is going to  
25 point to something along the way and identify it by some sort

1 of location. Here, it's a pointer to a location in a field ID  
2 table.

3 We have a dispute with Google about whether that's  
4 properly thought of as data. We have admissions from Google's  
5 witnesses that it's not data. But, set that aside. All we're  
6 focusing right now on is the legal question under the Court's  
7 construction.

8 And, again, because there's no requirement of only or  
9 exclusively, that the 01 may initially point to a field ID  
10 table does not preclude consideration of what happens  
11 downstream, as the Court told the jury yesterday, to decide  
12 whether in this particular example 01 is -- meets the  
13 definition of a symbolic reference.

14 **THE COURT:** All right. Let's hear what Google has to  
15 say.

16 **MR. KAMBER:** Thank you, Your Honor.

17 The question is a little bit confusing, but Oracle is  
18 clearly interpreting it to be asking whether a reference can be  
19 both a numeric reference and a symbolic reference at the same  
20 time.

21 That's an argument that they never put forward in the  
22 expert reports or that none of the experts even put forward  
23 during the course of this trial. In fact, it would be  
24 inconsistent with the specification that suggests that it can  
25 be either symbolic or numeric. There are a few references to

1 that in Column 2 of the patent. Specifically, at lines 41  
2 through 47, and 55 through 59.

3 If there's a numeric reference in the instructions,  
4 it can't be symbolic at the same time. The Court has already  
5 instructed the jury on that point last week, when they were  
6 asking a very similar question.

7 Specifically, the Court noted, at 4325, starting at  
8 line 2:

9 "If the instructions contain a numeric  
10 reference, then it does not somehow turn into  
11 a symbolic reference on account of what  
12 happens downstream."

13 Absolutely right.

14 Then the Court discussed how to determine whether  
15 it's a numeric instruction in the first place, applying the  
16 Court's claim construction. So you ask the question -- this is  
17 at line 14:

18 "So you ask that question. You look at  
19 whatever is in that little box" --  
20 instructions -- "and you say, does that  
21 identify data by a name other than the  
22 numeric memory location of the data?"

23 "If the answer to that is that it identifies  
24 a numeric memory location of the data, then  
25 it is not a symbolic reference; it's a

1           numeric reference. And it doesn't get  
2           transmogrified into a something else on  
3           account of what happens downstream."

4           Again, that is correct in light of the specification.  
5       It's discussed in the Court's claim construction order that  
6       there are two types of references that do not exist both at the  
7       same time.

8           To answer the question as Oracle is asking you to  
9       answer it would be inconsistent with the Court's instructions  
10      last week.

11           **THE COURT:** All right. Anything more?

12           **MR. JACOBS:** I think the jury may be turning into  
13      patent drafters because they are actually asking the question  
14      in a way that aligns well with the Court's claim construction.

15           What the Court said to the jury in response to the  
16      question last week had a different focus. The question there  
17      was "the data." "The data." And that implies that there is  
18      only one data to be considered.

19           And we've have that argument. We briefed that to you  
20      in the JMOLs. We think we're correct that the data that's  
21      being referred to is not entries into field tables. It's  
22      talking about the data in the data object. They are not asking  
23      a question which allows an answer focused on that question of  
24      claim construction.

25           But what the Court said to them last week was "the

1 data," implying that there is only one data. This question  
2 implies that there are two possible locations of data. And  
3 under the Court's claim construction of "symbolic reference,"  
4 so long as there is data that is identified by a name other  
5 than the numeric memory location of the data, the "refer" is a  
6 symbolic reference.

7 So the question is teed up a little differently than  
8 last week, and it deserves a -- an answer that is focused on  
9 the question itself.

10 And the answer, does the existence of an initial  
11 numeric reference preclude the existence of a symbolic  
12 reference, under the Court's construction of symbolic reference  
13 the answer has to be, no, there is no such preclusion.

14 **THE COURT:** All right. Once again, the lawyers are  
15 of zero help. Let's bring in the jury and the judge will do it  
16 on his own.

17 Shouldn't say you are zero help. You just don't  
18 agree on anything, so I have to figure it out on my own.

19 (Jury enters at 11:06 a.m.)

20 **THE COURT:** All right. Welcome. Please be seated.

21 Greg Thompson, foreperson --

22 **FOREMAN THOMPSON:** Yes.

23 **THE COURT:** -- writes --

24 **FOREMAN THOMPSON:** Are you saying it for me?

25 (Laughter)



1           **THE COURT:** It has your name on it.

2           **FOREMAN THOMPSON:** Okay.

3           **THE COURT:** But the handwriting seems better than  
4 your other note --

5           (Laughter)

6           **THE COURT:** -- so maybe you didn't write this one.

7           But here it is:

8           "In the symbolic reference definition, if we  
9           find a reference that identifies data by a  
10          numeric memory location of the data, does the  
11          existence of an initial numeric reference  
12          preclude the existence of a symbolic  
13          reference?"

14          I'll repeat it. That was a lot to swallow in one  
15 breath.

16          "In the symbolic reference definition" -- so let me  
17 stop there. I think you're talking about my definition in  
18 paragraph 11, which I will now read to you.

19          "The term 'symbolic reference' means 'a  
20          reference that identifies data by a name  
21          other than the numeric memory location of the  
22          data and that is resolved dynamically rather  
23          than statically.'"

24          All right. So you ask:

25          "In the symbolic reference definition, if we

1 find a reference that identifies data by a  
2 numeric memory location of the data, does the  
3 existence of an initial numeric reference  
4 preclude the existence of a symbolic  
5 reference?"

6 Now, these claims all refer to instructions  
7 containing these references. So the starting point is, you're  
8 looking at what's in the instructions.

9 Now, it's either going to be a numeric reference or  
10 it's going to be a symbolic reference. Moreover, you could  
11 have, at one point, a numeric reference. Maybe you could have  
12 a symbolic reference 35 lines down, because there are many  
13 different references along the way. Every -- every step in  
14 those instructions could have a reference. One might be  
15 numeric. One might be symbolic. But, for any given reference,  
16 it can't be both. It's got to be one or the other.

17 So how do you tell what it is? You look at the  
18 instruction set. You look at the reference. And you ask this  
19 question: Is that thing referring to the numeric memory  
20 location?

21 If the answer is yes, then it's a numeric reference.  
22 If the answer is no, it's not referring to the numeric memory  
23 location, then it's a symbolic reference.

24 Now, let's say one of them happens to be a numeric  
25 one. Maybe later on another one is symbolic. So the way I

1 read your question, you're asking me if you find one numeric  
2 reference, does that preclude the possibility of a symbolic  
3 reference later on in the instructions? No, that doesn't do  
4 that. But it does preclude it for that one instance.

5           If you find a numeric reference, that's a numeric  
6 reference. End of story. It can't be both. Because a numeric  
7 reference is something that refers directly to the location in  
8 memory where that data is stored. It's not symbolic. It's  
9 like a direct indicator where you go in memory to get that  
10 data.

11           So for any line item, it's either numeric or it's  
12 symbolic. But, if you find way up here that it's numeric,  
13 somewhere else in the instructions it might be symbolic.

14           So at least in terms of what the instructions -- the  
15 term "symbolic reference" -- I want to just try to put a point  
16 on this.

17           For any given location, it's got to be one or the  
18 other. For any item in the instruction set, it's got to be one  
19 or the other. It can't be both.

20           But somewhere in the instruction set you might have  
21 one that is numeric, and another later on that is symbolic, or  
22 vice versa.

23           One of you, at least, is nodding. So I take it that  
24 at least one of you got what I said. And that's the best I can  
25 do.

1 (Laughter)

2 **THE COURT:** I can't -- you know, it's the best I can  
3 do. This is not easy for me. It's not easy for you.

4 So please go back into the jury room and dig right  
5 in.

6 Thank you.

7 **THE CLERK:** All rise.

8 (Jury out at 11:12 a.m.)

9 **THE COURT:** All right. Be seated. You can say  
10 anything you'd like for the record.

11 **MR. JACOBS:** This is for the record but also for the  
12 deliberations, Your Honor.

13 I think it would be helpful and important to explain  
14 to the jury what the data is that is being referred to.

15 In the Court's last direction to them the comment was  
16 that you go off and look at whether it's pointing to the  
17 numeric location of the data that's being obtained. That's  
18 exactly right. I fear it may have gone over their heads  
19 because their question wasn't quite directed to the question of  
20 what is the data.

21 But it is the data that is being obtained that is the  
22 relevant data here. With that instruction, I think this  
23 disagreement they're having about whether something is a  
24 numeric or a symbolic reference would go away.

25 **THE COURT:** I gave you the chance the other day --

1 you rejected it and spurned it -- to have a five-minute  
2 supplemental argument where you could have made all the points  
3 you wanted, and the other side could have made their points.  
4 No, you spurned that opportunity. I'm sure you now regret it.  
5 But, I disagree with what you just said.

6 **MR. JACOBS:** Okay.

7 **THE COURT:** Does the other side wish to make any  
8 points?

9 **MR. JACOBS:** If I may, Your Honor, that was on the  
10 '520.

11 **THE COURT:** Well, who cares? You didn't like the  
12 opportunity then. You thought it was to your advantage to just  
13 go with the flow. And I think that was maybe on both sides a  
14 mistake.

15 I think the lawyers could have benefited this jury  
16 by -- You know, probably, what's on their minds. You could in  
17 five minutes make your best points.

18 And if you still think you would be willing -- I  
19 would require you to stipulate, but if you stipulate to it, I  
20 think it would do the jury some good.

21 **MR. KAMBER:** Your Honor, I'm not sure that we're  
22 willing to do that.

23 **THE COURT:** Not sure?

24 **MR. JACOBS:** I'm sure we are.

25 **THE COURT:** What?

1           **MR. JACOBS:** I'm sure we are.

2           **THE COURT:** You are now. Okay. So you changed your  
3 mind.

4           How about you over there?

5           **MR. KAMBER:** No, Your Honor. Thank you.

6           **THE COURT:** You say no. That's fine. That's your  
7 right. You don't -- you don't -- I'm not going to force this  
8 on anyone.

9           Okay. Anything more you want to bring up?

10          **MR. KAMBER:** Not from us, Your Honor.

11          **MR. JACOBS:** Nothing, Your Honor.

12          **THE COURT:** Okay. Stand by.

13          (Proceedings in recess from 11:15 a.m. to 11:46 a.m.)

14          **THE COURT:** Please be seated. Are both sides ready?  
15 I can wait a few minutes, if you need.

16          **MR. JACOBS:** They will be here in just a moment, Your  
17 Honor.

18          **THE COURT:** Let's wait then.

19          **MR. JACOBS:** Thank you.

20          (Pause.)

21          **MR. JACOBS:** Thank you for waiting, Your Honor.

22          **THE COURT:** All right. The jury, of course, is not  
23 present. The lawyers are present. Today is Tuesday, now  
24 11:50. And I think the jury said they would be going until  
25 1:00 today; is that right?

1           **MR. JACOBS:** Correct.

2           **THE CLERK:** Correct, Your Honor.

3           **THE COURT:** And again tomorrow until 1:00, right?

4           **MR. PAIGE:** That's right.

5           **THE COURT:** Here's what I propose to do. In the  
6 event they don't have a verdict by tomorrow at 1:00, and they  
7 are still deliberating, then we will take Thursday, Friday and  
8 Monday off, and resume on Tuesday.

9           I would like, personally, to take Thursday and Friday  
10 and Monday off for reasons I don't want to go into. But that  
11 would be, you know, several days off. But I don't see the  
12 problem in doing it. And I would want to tell the jury that  
13 today, what the schedule would be.

14           So any reaction by the lawyers?

15           **MR. JACOBS:** No objection. No problem with us, Your  
16 Honor.

17           **THE COURT:** All right. How about over there?

18           **MR. KAMBER:** No objection, Your Honor.

19           **THE COURT:** Okay. So, Dawn, at an appropriate point  
20 when they are, you know, maybe on break or something, if you  
21 could say that we would like to have them come in here so I can  
22 tell them what the schedule will be.

23           **THE CLERK:** Okay.

24           **THE COURT:** And until they tell me that they're  
25 deadlocked, then my plan is just let them go as long as they

1 would like.

2           They could go all next week except for -- you know.  
3 But I don't know what their view is on when they will decide  
4 that they're deadlocked, if ever.

5           But I do think I would want them to be able to make  
6 some plans for the rest of the week, without them suddenly  
7 finding out on Thursday morning that they are not going to be  
8 coming in.

9           So don't go too far.

10           Dawn, can you -- does anyone mind if we just do this  
11 right now?

12           **MR. JACOBS:** Fine.

13           **THE COURT:** Let's bring the jury in right now.

14           (Jury enters at 11:50 a.m.)

15           **THE COURT:** Okay. Please be seated.

16           I want to talk with you about the schedule because,  
17 you know, next Monday is Memorial Day, and that's a federal  
18 holiday. We will not be in session then. But, I want to take  
19 Thursday and Friday off this week so that you will not be in  
20 session on Thursday, not on Friday, and not next Monday.

21           So if you don't have a verdict by Wednesday when you  
22 break, then we would come back on Tuesday of next week. But I  
23 wanted you to have this heads up so you could make some plans  
24 for Thursday, Friday. And Monday being a long weekend, maybe  
25 it's not too late for you to retrieve some extra plans that you



1 might have been thinking about.

2 And so this is my idea. The lawyers are -- and I  
3 personally want to do it, myself, for family reasons. And  
4 don't blame the lawyers. You can blame me.

5 But I think maybe you could take advantage of the  
6 opportunity, as well. And I could promise you this, that we  
7 are on track to finish maybe even before the original date that  
8 we had set for the middle of June. And so I don't see that as  
9 a problem.

10 Okay. So we -- I understand you're going to go until  
11 1:00 today and 1:00 tomorrow. Is that your plan?

12 (Jurors affirm.)

13 **THE COURT:** You are always free to change that if you  
14 want. But that's also fine with us if that's what you want to  
15 stand by.

16 But come Thursday, we will be on a hiatus for  
17 Thursday, Friday and Monday, and then resume again on Tuesday.

18 So everybody got that in mind?

19 (Jurors affirm.)

20 **THE COURT:** Good. I apologize for bringing you back.  
21 If I had thought when I had you out here before I would have  
22 mentioned this to you. But I hadn't yet run it by the lawyers,  
23 and I needed to do that.

24 Okay. With that, I'll let you go back to the jury  
25 room. Thank you.

1 (Jury out at 11:53 a.m.)

2 **THE COURT:** All right. Any other business we can do  
3 while I have you all here?

4 **MR. JACOBS:** Nothing, Your Honor.

5 **MR. KAMBER:** Not from us, Your Honor.

6 **THE COURT:** Okay. Well, you owe me some paperwork by  
7 noon tomorrow.

8 **MR. KAMBER:** Indeed.

9 **THE COURT:** Don't ask for extensions on that.

10 (Laughter)

11 **THE COURT:** I am looking forward to your answers.

12 **MR. KAMBER:** Thank you.

13 **THE COURT:** Your replies that are due on Thursday I  
14 won't get unless they are faxed to me somehow. But I am going  
15 to take with me your briefs tomorrow.

16 All right. Thank you.

17 **MR. KAMBER:** Thank you.

18 (At 11:54 a.m. the proceedings were adjourned during  
19 further jury deliberations.)

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**CERTIFICATE OF REPORTER**

I, KATHERINE POWELL SULLIVAN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C 10-3561 WHA, **Oracle America, Inc., vs. Google, Inc.**, were reported by me, certified shorthand reporter, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings at the time of filing.

\_\_\_\_\_/s/ Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR  
U.S. Court Reporter

Tuesday, May 22, 2012

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